On 9-4-02 the court below entered a "final" order for the level of Bambi Lake.

On 9-20-02 Petitioner Yee filed a timely motion for a new trial and post judgment relief pursuant to MCR 2.611 and MCR 2.912.

On 11-4-02 the court entered "final" orders denying motion for a new trial and post judgment relief pursuant to MCR 2.611 and MCR 2.912, and an order allowing taxation of costs to be paid by appellant to respondents, Appendix Page 28-30.

Petitioner Yee filed a timely claim of appeal on 11-8-2002.

On 11-21-02 the court entered an Order Approving Assessment District and the Adoption of Maintenance Plan, Appendix Pages 2-7.

On 11-27-02 the clerk entered a timely Notice of Claim of Appeal and Receipt #74442.

The trial court conducted a trial in June of 2002. On August 30, 2002 the trial court entered an order setting the "normal elevation" of Bambi Lake at 800.67 feet above sea level under the authority of the Inland Lake Level Act of 1961 (ILLA), repealed by 1994 PA 451, § 90103 and now Part 307 of the NREPA.

Petitioner Yee filed a timely claim of appeal and on September 28, 2004, the Michigan Court of Appeals issued an unpublished opinion affirming the

trial Court in COA No. 244794, Shiawassee Circuit Court, LC No. 00-005032-CZ, Appendix Pages 8-25.

Petitioner filed a timely Motion and Brief for Rehearing which the Michigan court of appeals, "DENIED, " Appendix Pages 7-8.

Petitioner filed a timely application for appeal to the Michigan Supreme Court which did deny the application on June 28th, 2005, Appendix Pages 1.

The United States Supreme Court has jurisdiction pursuant to Supreme Court Rule 10(c) and 13(1) as this petition and proof of service is filed within 90 days of 6-28-2005, the date the Michigan Supreme Court denied the application for appeal.

Supreme Court Rule 13(1) and 28 USC § 1257(a) apply.

Court Rule 29(4)(b) does not apply.

II. The constitutional provisions

United States Constitution, Amendment V:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

United States Constitution, Amendment XIV:

> All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

III. Statement of the Case, Operative Facts:

The same issues were litigated in companion cases presented to the United States Supreme Court in *Yee v Shiawassee Co Bd of Comm'rs,* 251 Mich App 379; 651 NW2d 756 (2002), lv den 468 Mich 852, cert den 124 S Ct 538; 157 L Ed 2d 409 (2003).

The Bambi Lake Association petitioned the Shiawassee County Commissioners to establish the "normal elevation" of Bambi Lake under the authority of the Inland Lake Level Act. The County Commissioners petitioned the 35th Circuit Court, Shiawassee County, 208 N. Shiawassee Street, Owosso, MI 48817 to establish the "normal elevation" of Bambi Lake pursuant to MCL 324.30702(l); which provides in pertinent part:

> The county board of a county in which an inland lake is located. Shall within 45 days following receipt of a petition to the board of 2/3 of the owners of lands abutting the inland lake, initiate action to take the necessary steps to cause to be determined the normal level of the inland lake. [12]
>
> ...two thirds of the residents along Bambi Lake - the association - petitioned the county board to initiate this proceeding. The county board directed the drain commissioner to hire the Spicer Group to survey the lake and conduct apreliminary study considering the requisite

> factors in MCL 324.30707(4). The proper notice was published and a member of the public appeared at the trial and was allowed to testify,

UNPUBLISHED, September 28, 2004, COA No. 244794, Shiawassee Circuit Court, LC No. 00-005032-CZ, Before: Hoekstra, P.J., and Cooper and Kelly, JJ, PER CURIAM, Appendix Page 12-13.

> Dr. Yee challenges the trial court's subject matter jurisdiction to establish the normal level of Bambi Lake, which is private, under Part 307 of the NREPA, as he claims the statute applies only to public lakes. Dr. Yee also contends that applying the statute to a private lake amounts to an unconstitutional taking of private property for a nonpublic purpose.

id, Appendix Page 10.

The trial court and the appellate courts consistently asserted that the definition of 'inland lake" in MCL 324.30701(f) does not distinguish between public and private lakes, *Id*, Appendix Pages 10.

The trial court conducted a trial in June of 2002.

The public record is that in 1980 Cummings Dam maintained Bambi Lake at a normal pool elevation of 799.0 feet above mean sea level (U.S.G.S.), a normal pool of 22 acres and the crest elevation (top of the stop logs) at the 30 inch pipe spillway is 800.5 feet, 1.5 feet above the normal elevation of Bambi Lake, trial exhibit 2-E, trial transcript Vol II page 190 and Vol IV page 469.

The public record is that from 1970 to 1980 Bambi Lake did not vary by more than a foot. "According to the owner, the water level in Cummings Lake has not varied more than 12 inches in the last 10 years," trial exhibit 2-E.

The public record is that:

> The owner, Mr. Forrest Cummings, operates and maintains the dam. He lives approximately 1000 feet south of the dam...Under normal conditions, no operations are preformed as the lakes are spring fed and constant water elevation is maintained. In the event of a heavy rainfall the owner will open the 4 inch and 12 inch lines at the earth embankment. In case of extreme rainfall and high water level in Cummings Lake, the stop logs at the spill - way inlet structure are removed. The emergency spillway also acts as a natural overflow if the water level exceeds elevation 802. There are no gauges or recording instruments located at the dam. The operation of the control valves and spillway is dependent on the owner's presence and judgment. There are no formal, written guidelines for the operations of the dam. (trial exhibit 2-E.)

The public record is that Appellant did in fact purchase his riparian property on Bambi Lake in 1986, trial exhibit 2-X, Vol III page 404 and Vol IV page 447.

The title did include the property description that the "Easterly edge of parcel being the Westerly edge of water of a private lake" with no reservation of right for Forrest and Eva Cummings or their successor's in interest to raise Bambi Lake or flood any part of 5281 Lake Drive, trial exhibit 2-X, trial trascript Vol. III Page 404, Vol IV Page 447.

The public record is that Bambi Lake is a private, man made lake, created for residential development by Cummings Dam which Forrest Cummings built in 1970 pursuant to dam construction permit 70-7 issued by the DNR, now the DEQ, on april 24, 1974 in response to an application for dam construction, see trial Exhibit 2-G entered into evidence in the trial transcript at Vol II Page 214 and Vol IV Page 459 and trial Exhibit 2-E, trial transcript Vol. II, Page 190 and Vol. IV, Page 469.

The application and dam construction permit 70-7 did in fact specify a normal elevation of 799.0 feet, a maximum elevation of 799.5 feet and a minimum elevation of 798.5 feet, and a crest elevation at the 30" spillway of 799.0 feet, trial exhibit 2-G.

In 1972 the United States Geological Survey did determine that Bambi Lske was 799.0 feet above mean seal level. This was published in the 1972 Owosso, South Michigan Quadrangle Map that showed Bambi Lake at 799.0 feet, trial exhibit 2-H trial transcript in Vol. II, page 222 and Vol. IV at page 455.

This was confirmed by the United States Geological Survey in trial exhibits 2-BB, trial transcript Vol. II Pages 473 and 475.

In 1974 and 1979 Plaintiff's predecessors in interest purchased 5281 Lake Drive, Owosso, MI 48867 from Forrest and Eva Cummings in two parcels, trial exhibit 2-X, trial transcript Vol III, pages 404 and Vol IV, page 447.

The deeds describe the property as "to the water's edge" on a "private lake". 5281 Lake Drive was surveyed on 1974 and 1978 and the surveys filed in the Shiawassee County Register of Deeds office, trial exhibits V and W, trial transcript Vol III pages 399 and 400 and Vol. IV page 451, and accepted by the court at Vol III, page 407 as fact. At Vol III, page 408 Mr. Davison conceded that nowhere was there a reservation by the seller to raise or lower Bambi Lake from the levels shown in the surveys admitted as trial exhibts V and W.

Mr. Protasiewicz testified on behalf of the Spicer Group. He was a witness for the Shiawassee County Commissioners. He testified that he considered the "landowners' interest" and the "environmental interest of the lake", transcript Vol II, page 156. Mr. Protasiewiecz testified that part of Appellant William R. Yee's property would be flooded at the proposed normal elevation of Bambi Lake at 800.67 feet above sea level, trial transcript Vol II, Pages 163-165, trial exhibit 2-B, trial transcript II, Pages 165 and 175 and trial exhibit 2-S, trial transcript Vol III, Page 357.

On page 209 of the transcript the judge indicated that a dock under water was evidence that the lake was too high at the time that the photograph was taken, trial exhibit 2-F, photographic journal of Bambi Lake, Vol II page 196 and Vol IV page 473.

In Vol III on pages 346 and 347 Mr. Protasiewicz testified that flooding Appellant's property would not be a detriment because Appellant would then own the part of the lake that flooded Appellant's property.

Mark Vanraemdonck testified as a witness for the Shiawassee County Commssioners. Mark Vanraemdonck was a surveyor and testified that at no time did he know what the proper elevation of Bambi Lake was, trial transcript Vol. III, page 410.

In Vol IV on pages 433-435 the court denied Appellant's motion to bifurcate the trial so that there could be a condemnation procedure pursuant to the Inland Lake Level Act, MCL 324.30710; MSA 13A.30710:

> Act No. 87 of the Public Acts of 1980, being sections 213.51 to 213.77 of the Michigan Compiled Laws.

The chain of title shows Appellant's property to "the water's edge" on a "private lake", trial transcript page 450 trial exhibit 2-X.

Petitioner Yee testified that starting around 1994 Bambi Lake started revolving around 801 feet above sea level. Prior to that Appellant observed that Bambi Lake was unstable around 799.0 feet above sea level, trial transcript page 510.

Petitioner Yee has always argued that Bambi Lake is properly maintained at the 799.0 feet above mean sea level pursuant to dam construction permit 70-7.

The Spicer Group (Mr. Protosiewicz) found that Cummings Lake Dam had always been operated with the stoplogs all in place. Mr. Protosiewicz testified that Bambi Lake would be higher and lower at different times, trial transcript page 136. Mr. Protosiewicz did not testify that Bambi Lake was at any particular level on any particular day. There in fact was no testimony as to where Bambi Lake was on any given day except for William Yee's testimony. The Shiawassee County Commissioners submitted Mr. Homola's deposition. Mr. Homola did not testify as to where Bambi Lake was on any given day from 1970 to 1994.

On Vol IV, pages 245 through 247 of the trial transcript Mr. Westerly is looking at a photograph of the 30-inch spillway from trial exhibit 2-F, a photographic journal of Bambi Lake, with a board partly exposed above dirt and three additional boards (i.e stoplogs) above the partially exposed 4th board. Mr. Westerly refers to the bottom board as the first board. Mr. Westerly states that there was a

wedge between that bottom or first 6 inch stop log and the top three six inch stop logs and the water was flowing through the opening created by the wedge approximately one and a half feet below the top of the stoplogs.

The the public record is that the top of the stop logs were recorded at 800.5 feet above sea level in 1980, trial exhibit 2-E. The normal elevation of Bambi Lake was recorded at 799.0 feet above sea level in 1980, trial exhibit 2-E. Mr. Tressler's testimony was that Mr. Cummings pried the top three stop logs up so that when Bambi Lake reached 799.0 feet above sea level it would flow through the 3rd and 4th six inch stop log with no further action required by Mr. Cummings prior to 1994.

Mr. Westerly testified that Bambi Lake on average from 1970 to 1994 was lower than it was from 1994 to the present, trial transcript at page 248.

Exhibits 2-B and 2-S, Certified Boundary survey, transcript Volume II Pages 165 and 175 and Vol III Page 347 shows that the northeast survey monument on Petitioner Yee's property is under water when Bambi Lake is set at 800.67 feet above sea level. This is not part of the meander line described in the opinions rendered by the courts, but a survey monument that defines the property above the high water mark. The Spicer Group (Mr. Protosiewicz) testified that William Yee's would be flooded above the meander line and over the northeast survey monument in Vol. III of the transcript on pages 342-349.

At this point the Courts and the County Commissioners had knowledge that there was a necessity to initiate a condemnation hearing pursuant to MCL 324.30710 MSA 13A.30710 and:

> Act No. 87 of the Public Acts of 1980, being sections 213.51 to 213.77 of the Michigan Compiled Laws.

The Shiawassee County Commissioners and the Michigan Courts have proceded without invoking MCL 324.30710; MSA 13A.30710

The trial court established the normal elevation of Bambi Lake at 800.67 feet above sea level on the premise that it had the authority to establish the normal elevation regardless of William Yee's property rights.

Mr. Rusz testified as an expert for the Shiawassee County Commissioners. Mr. Rusz gave the only testimony about public benefit by raising Bambi Lake from a normal elevation documented at 799.0 from 1970 to 1980 in trial Exhibit 2-E to 800.67 feet as ordered by the court, in Vol IV, Page 299:

Q Maintaining the lake at the top of the stop logs, how would that benefit the general public beyond the riparian land owners?

A Mostly--mostly in terms of wildlife which don't, you know, aren't confined to property boundaries. Mostly it would be the wildlife that

would extend off onto other properties and that would be, in particular, the wetland dependent ones like ducks, geese, turtles, that sort of thing, that would benefit from the flooding of those wetlands adjacent to the lake.

The trial court did not conduct a condemnation proceeding or jury trial pursuant to MCL § 324.30710 MSA 13A.30710.

The federal questions were raised in a companion case, *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379; 651 NW2d 756 (2002), lv den 468 Mich 852, cert den 124 S Ct 538; 157 L Ed 2d 409 (2003). They were raised in the motion to transfer the case to Judge Fullerton which was denied by the trial court on the 19th day of March, 2001, Appendix page 33. They were raised in a motion for summary judgment which was denied by the trial court on 15th day of May, 2001, appendix page 32. They were raised in a motion for retrial that was denied on February 11th, 2002, Appendix page 30. They were raised in the claim of appeal to the Michigan Court of Appeals and they were raised again in the Petition for leave to appeal to the Michigan Supreme Court.

IV. Arguments of law:

The federal questions are again raised here.

The statute has not changed in substance since 1911. The statute gives the county commissioners authority to tax a public lake. Is the authority to tax a public lake indicia of a distinction between private and public lakes? Is an illegal tax on a private lake indicia of violation of United States Constitution, Amendment V and XIV? Are the state courts' refusals to issue an order restraining the Shiawasee County Commissioners from levying an illegal tax so far departed from the accepted and usual course of judicial proceedings as to overcome this court's reluctance to address errors in application of state laws and findings of fact? Petitioner urges yes.

The Inland Lake Level Act did not change.

Michigan courts refuse to accept private lakes.

In *Yee,* this Court rejected Dr. Yee's identical contentions, finding that the definition of 'inland lake'" in MCL 324.30701(f) does not distinguish between public and private lakes.[8]"

STATE OF MICHIGAN COURT OF APPEALS, IN RE LAKE LEVEL FOR BAMBI LAKE, SHIAWASSEE COUNTY, Petitioner-Appellee, BAMBI LAKE ASSOCIATION, Respondent-Appellee, WILLIAM R. YEE, Respondent-Appellant, UNPUBLISHED, September 28, 2004, Appendix Page 10.

COA No. 244794, Shiawassee Circuit Court, LC No. 00-005032-CZ, citing *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379, 400-401; 651 NW2d 756 (2002), lv den 468 Mich 852, cert den 124 S Ct 538; 157 L Ed 2d 409 (2003).

The courts in Michigan insist on sustaining palpable error. Michigan statutes and courts have carved out barriers that protect private lakes. The Inland Lake Level Act makes a sharp distinction between public and private lakes.

The Michigan Courts assert correctly that the Inland Lake Level Act has not changed in substance since 1911.

The Natural Resources and Environmental Protection Act, Act 451 of 1994 and Act 57, 58, 59, 60 and 71 of 1995, MCL 324.101 et seq. Herinafter the NREPA, does not change the law, it codifies and preserves prior statutes and case law:

> MCL 324.102; MSA 13A.102: The repeal of any statute by this act does not relinquish any penalty, forfeiture, or liability whether criminal or civil in nature, and such statute shall be treated as still remaining in force as necessary for the purposes of instituting or sustaining any proper action or prosecution for the enforcement of the penalty, forfeiture or liability.
>
> MCL 324.107; MSA 13A.107: It is the intention of the legislature that editorial changes

> in the language of statutes codified as parts within this act not be construed as changes to the meaning of those statutes

The Michigan Courts correctly assert that the ILLA is unchanged since 1911, preserving all prior case law pursuant to *Yee v Shiawassee Co Bd* of *Comm'rs,* 251 Mich App 379, 396; 651 NW2d 756 (2002), lv den 468 Mich 852, cert den 124 S Ct 538; 157 L Ed 2d 409 (2003):

> After its enactment, the ILLA underwent only minor revisions until 1995, when it was substantially reorganized and recodified {651 N.W.2d 767} as Part 307 of the NREPA.32 However, despite this extensive reorganization, the substance of the act remains as it was under the ILLA. The procedures for initiating an action to establish the "normal level" of an inland lake are currently outlined in §§ 30702-30704 of the NREPA.[33]

Prior statutory law that is preserved is the distinction between public lakes that could be taxed and private lakes that could not be taxed pursuant to MCL § 281.79; MSA § 11.300(19). Prior case law that is preserved includes *In re Van Ettan Lake*, 149 Mich. App. 517, 522-523; 386 N.W.2d 572 (1986):

> The expense of determining the normal height and water level of any public inland lake, the expense of constructing and maintaining any

> dam, together with the cost and expense of acquiring lands and other property by condemnation necessary thereto, may be assessed, levied and collected upon the taxable property within the special assessment district." MCL § 281.79; MSA § 11.300(19).

Prior case law that is preserved includes law that states artificial lakes and millponds cannot have a normal elevation regulated by nature, their elevation is always regulated by the hand of man pursuant to *Gillespie* v *Dunn* 246 Mich 415, 419; 224 NW 374 (1929):—

> There can be no such thing as a natural level of water in a millpond or artificial lake.

Bambi Lake is artificial and cannot have a historical elevation regulated by nature. Its level was regulated by Dam Construction Permit 70-7 which stated the normal elevation was 799.0 feet above sea level, the minimal elevation was 798.5 feet above sea level and the maximum elevation was 799.5 feet above sea level, trial exhibit 2-G. Mr. Cummings made a public record, an admission against interest, that he had maintained Bambi Lake at a normal elevation of 799.0 feet from 1970 to 1980 and it had not varied by more than a foot during those 10 years, trial exhibit 2-E.

The Michigan Court of Appeals returned a motion submitted by Petitioner Yee to restrain the county commissioners from levying an illegal tax.

The Michigan Court of Appeals did not rule or acknowledge by an official judgment or order petitioner Yee's motion to restrain an illegal tax on Bambi Lake, a private lake.

This petitioner filed a motion with the Michigan Supreme Court to restrain an illegal tax on a private lake. The Michigan Supreme court did deny the motion to restrain the illegal tax without issuing an opinion or otherwise declaring the state of law.

The Natural Resources and Environmental Protection Act, Act 451 of 1994 and Act 57, 58, 59, 60 and 71 of 1995, MCL 324.101. et seq. codifies and preserves prior statutes and case law, MCL 324.102; MSA 13A.102:

> The repeal of any statute by this act does not relinquish any penalty, forfeiture, or liability whether criminal or civil in nature, and such statute shall be treated as still remaining in force as necessary for the purposes of instituting or sustaining any proper action or prosecution for the enforcement of the penalty, forfeiture or liability.

MCL 324.107; MSA 13A.107: *

> It is the intention of the legislature that editorial changes in the language of statutes codified as parts within this act not be construed as changes to the meaning of those statutes

The Court of Appeals asserts that the Inland Lake

Level Act has not changed over the years, *Yee v Shiawassee Co Bd of Comm'rs,* 251 Mich App 379; 651 NW2d 756 (2002), lv den 468 Mich 852, cert den 124 S Ct 538; 157 L Ed 2d 409 (2003)*:

> After its enactment, the ILLA* underwent only minor revisions until 1995, when it was substantially reorganized and recodified {651 N.W.2d 767} as Part 307 of the NREPA.[32] However, despite this extensive reorganization, the substance of the act remains as it was under the ILLA.
>
> The procedures for initiating an action to establish the "normal level" of an inland lake are currently outlined in §§ 30702-30704 of the NREPA.[33]

The court of appeals and the trial court erroneously relies upon *In re Van Ettan Lake*, 149 Mich. App. 517; 386 N.W.2d 572 (1986), see *Yee v Shiawassee Co Bd of Comm'rs,* 251 Mich App 379; 651 NW2d 756 (2002), lv den 468 Mich 852, cert den 124 S Ct 538; 157 L Ed 2d 409 (2003). The ILLA applies only to public lakes pursuant to MCL 281.79; MSA 11.300(19) and *In re Van Ettan Lake*, 149 Mich. App. 517, 522-523; 386 N.W.2d 572 (1986):

> "The expense of determining the normal height and water level of any public inland lake, the expense of constructing and maintaining any dam, together with the cost and expense of

> acquiring lands and other property by condemnation necessary thereto, may be assessed, levied and collected upon the taxable property within the special assessment district." MCL 281.79; MSA 11.300(19).

The statute auhorizes a tax on a public lake but not on a private lake. There is no statute that authorizes a tax district on a private lake such as Bambi Lake.

The Inland Lake level act was never intended to be applied to private lakes and never has been applied to private lakes. The courts below lack jurisdiction regarding private lakes under the inland lake level act according to statutes and case law cited above.

The Shiawassee County Commissioners, the trial court, and the Michigan Appellate Courts are in fact condemning Petitioner's Property by flooding without the condemnation proceedings required by MCL 324.30710 MSA 13A.30710.

The Shiawassee County Commissioners, the trial court and the Michigan Appellate Courts are in fact imposing an illegal tax on Bambi Lake, a private lake based upon a statute and case law that clearly authorizes taxes on a public lake. They are in gross violation of Petitioner Yee's constitutional rights as contemplated by *Kampf v Kampf*, 237 Mich. App. 377, 381-382; 603 N.W.2d 295 (1999):

> The federal and Michigan constitutions guarantee that the state cannot deny people "life,

liberty, or property without due process of law."

U.S. Const, Am XIV; Const 1963, art 1, § 17. Due process, which is similarly defined under both constitutions, *Palmer v Bloomfield Hills Bd of Ed*, 164 Mich. App. 573, 576; 417 N.W.2d 505 (1987), specifically enforces the rights {Mich. App. 382} enumerated in the Bill of Rights, and it also provides for substantive and procedural due process. *Daniels v Williams*, 474 U.S. 327, 337; 106 S. Ct. 662; 88 L. Ed. 2d 662 (1986). Procedural due process limits actions by the government and requires it to institute safeguards in proceedings that affect those rights protected by due process, such as life, liberty, or property. See *Electro-Tech, Inc v HF Campbell Co*, 433 Mich. 57, 66, n 9; 445 N.W.2d 61 (1989); Dow v Michigan, 396 Mich. 192, 202; 240 N.W.2d 450 (1976).

Petitioner Yee's neighbors and the Shiawassee County Commissioners may not flood Petitioner Yee's property pursuant to *Stuart* v *Defrost Finnish Co-op. Summer Camp Assn.*, 277 Mich 144, 151; 269 NW 122 (1936):

In the case of *Taylor v. Indiana & Michigan Electric Co.*, 184 Mich. 578, 589 (L.R.A. 1915 E, 294), this court said:

It is and always has been the law in this State that a dam owner cannot raise the water in his pond so as to flood and damage the lands of

> riparian owners upstream, or so manipulate the discharge of waters from his dam that they will flood and damage the lands of such owners downstream."

Petitioner Yee's neighbors and the County Commissioiner's may not flood Petitioner Yee's property under a statute that governs public lakes because Bambi Lake is a private lake, pursuant to the deed of title, the Fifth Amendment of the United States Constitution art 10, § 2 of the Michigan Constitution, and *Mumaugh v McCarley*, 219 Mich. App 641, 646-647; 558 NW2d 433 (1996):

> Land bordering water is riparian land. *Thies v Howland*, 424 Mich 282, 287-288, n 2; 380 NW2d 463 (1985). Riparian rights involve property rights that, if interfered with by the government, requires the payment of just compensation. *Peterman v Dep't of Natural Resources*, 446 Mich 177, 195; 521 NW2d 499 (1994). Both the Fifth Amendment of the United States Constitution and art 10, § 2 of the Michigan Constitution prohibit governmental taking of private property without just compensation. *Bevan v Brandon Twp*, 438 Mich 385, 3889-390; 475 NW2d 37 (1991), cer den 502 US 1060; 112 S Ct 941; 117 L Ed 2d 111 (1992). In this case, the trial court deprived Phelps of approximately eighty-five percent of his lake frontage. This order constituted a taking

> of Phelp's property in violation of the United States and Michigan Constitutions. Accordingly, we reverse the trial court's order and remand this case to the trial court for a new disposition of the relicted land.

The case is properly transferred back to Judge Fullerton.

Since the trial court below lacks jurisdiction regarding private lakes under the inland lake level act according to statutes and case law cited above, *Arnold v Ellis*, 5 Mich. App. 101, 109-112; 145 N.W.2d 822 (1966) is preserved by the NREPA. *Arnold* still applies to private lakes which were never under the jurisdictioin of the ILLA or NREPA.

The level of Bambi Lake is properly establshed by Petitioner Yee's deeded property rights. Since the parcels were purchased in 1976 and 1979 from Forrest and Eva Cummings, trial exhibit 2-X, chain of title, while Mr. Cummings was maintaining Bambi Lake at a normal elevation of 799.0 feet above sea level, trial exhibit 2-E, and trial exhibit 2-H, the matter is properly subject to a jury trial pursuant to, *Arnold* v *Ellis*, 5 Mich App 101, 109-115; 145 NW2d 822 (1966):

> Did the court err in deciding that the only reliable proof that it had before it in determining the water level was the geological survey made by

> the United States Department of Interior in 1914?
>
> ... We find no error in admitting the survey map to establish the water level.
>
> ...Clearly, the act as it stood at the time of this decision did not confer exclusive jurisdiction upon the county boards of supervisors to determine lake levels. Until the agencies mentioned in the statute elect to act under the authority of the statute, there is no reason why a court may not act.

In fact the ILLA and NREPA do not apply to private lakes at all. Private lakes remain under the jurisdiction of the circuit courts pursuant to *Arnold.*

Judge Judith Fullerton retains jurisdiction under MCR 8.111. As the NREPA cannot be applied to a private lake such as Bambi Lake, the same parties and the same issues arise again before Judge Judith Fullerton.

MCR 8.111(D) requires this case be assigned to Judge Fullerton as the matter arises from the same transactions; the building of Cummings Dam, the creation of Bambi Lake for residential development; Appellant's property rights at the time of the purchase of 5281 Lake Drive, Owosso, MI 48867 from Forrest and Eva Cummings; and the taking of Appellant's property by raising Bambi Lake and flooding Appellant's property.

Petitioner respectfully requests the United States Supreme Court grant a petition for a writ of certiorari pursuant to Supreme Court Rule 16 and order that the case be scheduled for briefing and oral argument with the purpose of restoring due process to Petitioner Yee.

No costs should be assessed against Petitioner Yee

The courts below should not assess costs against petitioner.

The cases below should be reversed because the courts do not have jurisdiction under the Inland Lake Level Act. Without jurisdiction to set the lake level, the courts do not have jurisdiction to award costs against Petitioner Yee as the Shiawassee Commissioners and other parties including the courts were acting outside the law.

At this time the Shiawassee County Commissioners are in the process of levying an illegal tax on a private lake based upon a statute that only grants the authority to a public lake.

The current tax violates Petitioner Yee's rights to due process and right to property protected by U.S. Const, Am XI and V and *Kampf v Kampf*, 237 Mich. App. 377, 381-382; 603 N.W.2d 295 (1999):

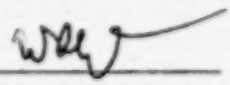
> The federal and Michigan constitutions guarantee that the state cannot deny people "life, liberty, or property without due process of law." U.S. Const, Am XIV; Const 1963, art 1, § 17. Due

process, which is similarly defined under both constitutions, *Palmer v Bloomfield Hills Bd of Ed*, 164 Mich. App. 573, 576; 417 N.W.2d 505 (1987), specifically enforces the rights {Mich. App. 382} enumerated in the Bill of Rights, and it also provides for substantive and procedural due process. *Daniels v Williams*, 474 U.S. 327, 337; 106 S. Ct. 662; 88 L. Ed. 2d 662 (1986).

Petitioner respectfully requests the United States Supreme Court grant a petition for a writ of certiorari pursuant to Supreme Court Rule 16 and order that the case be scheduled for briefing and oral argument with the purpose of restoring due process to Petitioner Yee.

Petitioner Yee respectfully requests that the United States Supreme Court consider active intervention and refer this matter to the United States Attorney General for investigation and prosecution under the Racketeer Influenced and Corrupt Organizations Act, (RICO), 18 U.S.C. § 1962(c)

I assert that all of the above is true to the best of my knowledge, information and belief,



William R. Yee (P35984), Pro Per, Petitioner,
PO Box 310, Owosso, MI 4886-0310
989-666-2878

Supreme Court, U.S.
FILED

05-403 SEP 24 2005

OFFICE OF THE CLERK

Docket Number _____

In the Supreme Court of the United States

William R. Yee, Petitioner

v

Shiawassee County Board of Commissioners,
et al, respondents

On Petition for Writ of Certiorari

to the Michigan Supreme Court

Petition for Writ of Certiorari, Brief of Petitioner
Volume II - Appendix

William R. Yee, (P35984), appearing pro se
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989-666-2878

Michigan Supreme Court Lansing, Michigan

Order: June 28, 2005 127506 & (54)

IN RE LAKE LEVEL FOR BAMBI LAKE SHIAWASSEE COUNTY, Petitioner-Appellee, BAMBI LAKE ASSOCIATION, Respondent-Appellee, and WILLIAM R. YEE, Respondent-Appellant. SC: 127506; COA: 244794; Shiawassee CC: 00-005032-CZ

Clifford W. Taylor, Chief Justice; Michael F. Cavanagh, Elizabeth A. Weaver, Marilyn Kelly, Maura D. Corrigan, Robert P. Young, Jr., Stephen J. Markman, Justices.

On order of the Court, the application for leave to appeal the September 28, 2004 judgment of the Court of Appeals is considered, and it is DENIED, because we are not persuaded that the questions presented should be reviewed by this Court. The motion for a restraining order against the Shiawassee County Commissioners is DENIED.

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(Seal of the Michigan Supreme Court, Lansing)

I, CORBIN R. DAVIS, Clerk of the Michigan Supreme Court, certify that the foregoing is a true and complete copy of the order entered at the direction of the Court.

June 28, 2005, s/Corbin R. Davis

Clerk

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STATE OF MICHIGAN, IN THE 35TH CIRCUIT COURT FOR THE COUNTY OF SHIAWASSEE In the Matter of: Determination of Lake Level for the Waters of Bambi Lake Bennington Township, Shiawassee County, Michigan, File No.00-005032-CZ, Hon. Randy L. Tahvonen

Patrick A. Aseltyne (P23293), Jason D. Kolkema, JOHNSON, ROSATI, LaBARGE, ASELTINE & FIELD, P.C., Attorneys for Shia. Co., 303 S. Waverly Road, Lansing, MI 48917, (517) 886-3800

EDWARD B. DAVISON (P26421), GAULT DAVISON, Attorneys for Respondents Cummings et al, Tenth Floor, Northbank Center, 432 N. Saginaw Street, Flint, MI 48502, (810) 234-3633,

WILLIAM YEE (P35984) Respondent In Pro Per, P. O. Box 310, Owosso, MI 48867-0310 (517) 214-6196 (517) 402-6020

ORDER APPROVING ASSESSMENT DISTRICT AND THE ADOPTION OF MAINTENANCE PLAN FOR BAMBI (a/k/a CUMMINGS) LAKE

At a session of said Court, held in the City of St. Johns, County of Clinton, State of Michigan on the 18th day of November, 2002.

PRESEN: HON. RANDY L. TAHVONEN

This matter having come before the Court on the Petition by the Shiawassee County Board of Commissioners, requesting that the Court approve an assessment district and the adoption of a

maintenance plan for Bambi (a/k/a Cummings) Lake, pursuant o the authority found ii the Inland Lake Level Act, MCL 32430701 et seq.; the Court having conducted a hearing in open court following the notice required by said Act and the Court having listened to the presentations of the interested parties, reviewed the exhibits and pleadings and set forth its findings and conclusions on the record on this date;

IT IS HEREBY ORDERED THAT for the reasons set forth on the record on August 30, 2002 and October 29. 2002, the attached assessment district Boundaries are approved for a special assessment district, as provided by MCL 324.30707(5). (See Attachment A)

IT IS HEREBY ORDERED THAT the Shiawassee County Drain Commissioner's plan to maintain the take level is approved. (See Attachments) This Order resolves the last pending claim and closes the case.

s/ Randy L. Tahvonen

Honorable Randy L. Tahvonen

Visiting Circuit Court Judge

Countersigned:

s/ Deputy Clerk

Deputy Clerk

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(Exhibit A-Assessment District for Bambi Lake)

Spicer Group © 2000, Spicer Group, 1400 Zeeb Drive, St. John's MI 48879, Prepared for Shiawassee County Commissioner, 208 N. Shiawassee Street, Corunna, MI 48817 TEL 989 224-2355 FAX 989 224-2357

Exhibit A, SCALE 1" = 200' DWG. NO.:JA-2804

N. LINE SECTION 14 100-03-02 FLYNN E. & J, FORREST HILLS SUBDIVISION.; 100-004 WALEN AND ROSS, *9.44 ACRES; 100-003-01, JACKSON, B & K, 1.66 ACRES; 100-009-03, BRAIDWOOD, G, 1.74 ACRES, 100-002, PARSON, D., *0.99 ACRE; 100-01-07, BRAIDWOOD TRUST, *4.16 ACRES; 100-012-01, GRINNELL A. & K., *8.18 ACRES; 200-007-02, DUTCHER M. & K., *1.55 ACRES; LAKE EVA, 444', 110, 419' 354' 38' 883' 726', 295', 1911' 20' 458' 1585' 227' 132' 326' 232' ; 100-01-04, BRAIDWOOD TRUST, 2.75 ACRES; 100-001-06, COWAN D. & K., *0.09 ACRES; 200-007-03, JUDD, M. & S., *7.63 ACRES; 100-012-04, JUDD, M. & S., *3.77 ACRES; 100-012-03, GINGERY, D. & M., *2.02 ACRES; 100-012-02, GRINNELL A. & K., *1.97 ACRES; 100-012 RONBAR INC.; 010-14-100-01-06, GINGERY, D. & M., 7.6 ACRES; N, & S. 1/4 LINE SECTION 14; 010-14-100-011, COWAN DARRELL & KIMBERLY, *20.20 ACRES; 100-01-10, CALL K., *3.75 ACRES; 100-002 CALL B. & K., 2.00 ACRES;

100-001 CUMMINGS, F. & E., *5.16 ACRES; 100-001-01, CALL B. & K., 9.37 ACRES; E. & W. 1/4 LINE SECTION 14; 100-001-02, DUTCHER M. & K., 6.33 ACRES; 300-002 CUMMINGS, F. & E., *0.84 ACRES; 300-003 SECONSKY, ANTHONY AND JUDY, *52.86 ACRES; 300-003-02, SECONSKY, A. 1.49 ACRES; 300-001, HIGHLAND PINES, *83.91 ACRES; 100-007 CUMMINGS, F. & E., *10.06 ACRES; 100-010 EDWARDS, J. & J., *0.88 ACRES; 100-008 ANGLE-TRUST, 0.02; 100-007-01, KING, E. & M., 1.93 ACRES, 100-007-02, FLYNN, E & J, 8.58 ACRES; LAKE LEVEL DISTRICT BOUNDARY; SECTION 14, T.6N.-R.2E., BENNINGTON TOWNSHIP, SHIAWASSEE COUNTY, MICHIGAN; *CALCULATED BASED UPON TAX PARCEL DESCRIPTIONS

S. LINE SECTION 14; BREWER ROAD; N-↑

DRAWN BY: MLU; CHECKED BY: LJP; PILOT DATE: 08-01-02; SHEET 1 OF 1; JOB #: 99221.00; DRAWING #: JA-2804

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(Exhibit B Maintenance Plan for Bambi Lake)

Bambi Lake Outline for Preparation of Lake Level Operation And Maintenance Plan, August 2002

Lake Level Management:

1. The normal water surface elevation for Bambi Lake has historically been maintained at the top of

the weir structure with all of the stop logs in place (wa. elev. 800.67). The court has established this to now be the legal lake level.

2. A dam inspection will be completed during October, 2002 in accordance with criteria set by MDEQ dam safety regulations. The following items were identified during the last inspection and may still need to be addressed:

a. Vegetation control along the earth embankment, at the weir and at the emergency spillway

b. Placement of rip-rap at the outlet of the main spillway.

c. Easement acquisition to have legal access to the main spillway and emergency spillway.

d. A route maintenance schedule be established for the spillway.

A dam inspection report will be prepared and submitted to MDEQ for review and approval.

3. A lake level operation and maintenance plan will be prepared that will establish, at minimum, the following:

a. An inspection schedule of the main spillway (stop log structure), emergency spillway and earthen dam. At this time it is recommended that this inspection be done monthly.

b. A staff gauge will be installed so that the lake level can be easily monitored and recorded. It is recommended that the lake level be recorded by a

resident landowner weekly and that it be recorded by the Drain Commissioner's staff during the monthly inspection.

c. It is recommended that when the lake level reaches an elevation that is 0.3 feet above the established lake level that one or more stop logs be removed from the main spillway until the lake reaches the established elevation then the board(s) be replaced. This operation should be the responsibility of the Drain Commissioners office. The intent should be to lower the lake to the normal level with a 48 hour period.

d. The gate valve located on the 12' draw down discharge line should be exercised two times each year.

e. An emergency preparedness plan will be prepared and included as part of the operation and maintenance plan.

EX B

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Court of Appeals, State of Michigan, ORDER, IN RE LAKE LEVEL FOR BAMBI LAKE, Docket No. 244794, LC No 00-005032-CZ, Joel P. Hoekstra, Presiding Judge; Jessica R Cooper, Kirsten Frank Kelly, Judges The Court orders that the motion for reconsideration is DENIED.

(Seal, STATE OF MICHIGAN, COURT OF APPEALS)

A true copy entered and certified by Sandra Schultz Mengel, Chief Clerk on Nov 10, 2004

s/ Sandra Schultz Mengel

Sandra Schultz Mengel

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STATE OF MICHIGAN COURT OF APPEALS, IN RE LAKE LEVEL FOR BAMBI LAKE, SHIAWASSEE COUNTY, Petitioner-Appellee, BAMBI LAKE ASSOCIATION, Respondent-Appellee, WILLIAM R. YEE, Respondent-Appellant, UNPUBLISHED, September 28, 2004, COA No. 244794, Shiawassee Circuit Court, LC No. 00-005032-CZ, Before: Hoekstra, P.J., and Cooper and Kelly, JJ, PER CURIAM. Respondent Dr. (*sic* Stephen) Yee appeals as of right in propria persona from a bench trial judgment setting the level of Bambi Lake, on which he resides, at 800.67 feet above sea level pursuant to a petition filed by the Shiawassee County Board of Commissioners (the "county board") under Part 307 of the Natural Resources and Environmental Protection Act (NREPA). We affirm.

Beginning in 1994, the level of Bambi Lake allegedly began to rise, flooding portions of Dr. Yee's property and causing damage to his basement floor. Dr. Yet filed three separate suits seeking monetary damages for trespass and injunctive relief to require the Bambi Lake Association (the

"association") to maintain the surface level of Bambi Lake at 799 feet above sea level and prevent the county board from filing a petition pursuant to Part 307 of the NREPA to establish the lake's level over that elevation.[2] A history of this dispute appears in *Yee v*

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[1] MCL 324.30701 *et seq.*

[2] Dr. Yee filed his suits in the Shiawassee Circuit Court. After the assigned judge recused

(continued.,)

Shiawassee Co Bd of Comm'rs [3] However, we note that the trial court dismissed Dr. Yee's suits because the Cummings Dam construction permit issued pursuant to the dam construction approval act (DCAA) did not establish a legally enforceable lake surface level and because the trial court lacked subject matter jurisdiction to establish the normal level of Bambi Lake as Part 307 of the NREPA required the action to be initiated by the county board.[4]

Following this dismissal, the association petitioned the county board to initiate an action to establish the normal surface level of Bambi Lake. The county board commissioned the Spicer Group to conduct a preliminary engineering study to determine the historic level of the lake and examine the effects of

continuing to maintain the lake at that level. The report indicated that Bambi Lake would benefit from being maintained at its historic surface level of 800.67 feet above sea level. Accordingly, the county attorney filed a petition on June 13, 2000, with the Shiawassee Circuit Court to establish the normal level of Bambi Lake at 800.67 feet. [5] Dr. Yee was permitted to intervene in the action. Following a five-day bench trial in June of 2002, held two weeks after this Court issued its opinion in *Yee*, the trial court established the level of Bambi Lake consistent with the county board's petition. This appeal followed.

I. Subject Matter Jurisdiction

Dr. Yee challenges the trial court's subject matter jurisdiction to establish the normal level of Bambi Lake, which is private, under Part 307 of the NREPA, as he claims the statute applies only to public lakes. Dr. Yee also contends that applying the statute to a private lake amounts to an unconstitutional taking of private property for a nonpublic purpose. We review questions of subject matter jurisdiction de nova. [6] We also review questions of constitutional law de nova. [7]

In *Yee*, this Court rejected Dr. Yee's identical contentions, finding that the definition of 'inland lake" in MCL 324.30701(f) does not distinguish between public and private lakes.[8] Furthermore, establishing the normal surface level of a private

lake does not necessarily amount

(..continued)

himself, the State Court Administrative Office (SCAO) reassigned the cases to Judge Judith Fullerton of the Genesee Circuit Court.

[3] *Yee v Shiawassee Co Bd of Comm'rs*, 251 Mich App 379; 651 NW2d 756 (2002), lv den 468 Mich 852, cert den 124 S Ct 538; 157 L Ed 2d 409 (2003). This opinion resolved the consolidated appeals in Docket Nos. 226612,226613, and 226614.

[4] *Id.* at 386-387.

[5] The assigned judge again recused himself and the case was reassigned to Judge Randy L. Tahvonen of the Shiawassee Circuit Court after Judge Fullerton rejected a SCAO assignment. Judge Tahvonen denied Dr. Yee's motion to transfer this case to Judge Fullerton and this Court denied his motion to file an interlocutory appeal. *In re Lake Level for Bambi Lake*, unpublished order of the Court of Appeals, entered June 19, 2001 (Docket No. 233567).

[6] *Yee, supra* at 393.

[7] *People v* MY, 257 Mich App 126, 149; 667 NW2d 78 (2003).

[8] *Yee, supra* at 400-401.

to an unconstitutional taking of private property for